

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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:
DARRYL BROWN, :
Petitioner, :
: :
-against- : 20-CV-10491 (VSB)
:
LETITIA JAMES, et al., : **ORDER**
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Respondent. :
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VERNON S. BRODERICK, United States District Judge:

I am in receipt of pro se Petitioner Darryl Brown’s (“Petitioner”) motion for leave to proceed in forma pauperis on appeal pursuant to Federal Rule of Appellate Procedure 24(a)(1). (Doc. 31.) For the reasons stated below, the motion is DENIED.

On July 5, 2023, I adopted Magistrate Judge Katharine H. Parker’s August 31, 2021 Report and Recommendation in its near-entirety¹ and denied Petitioner’s petition for a writ of habeas corpus. (Doc. 18.) Petitioner, who at the time was represented by counsel Joey Jackson (“Mr. Jackson”), then filed a letter on August 7, 2023 requesting that the Clerk of the Court “notify [him] by mail if Mr. Jackson did file a Notice of Appeal on [his] behalf, or if he failed to do so.” (Doc. 19.) I ordered Mr. Jackson to provide a status update addressing Petitioner’s letter, which Mr. Jackson filed on October 5, 2023, detailing his representation of Petitioner and explaining that he is “no longer in a position to continue [his] representation.” (Doc. 21 at 2.) I directed Mr. Jackson to properly withdraw as counsel in accordance with Local Rule 1.4, which

¹ Although I disagreed with Judge Parker’s analysis of N.Y. Penal Law § 35.15, New York’s justification statute, I ultimately agreed with Judge Parker’s conclusions.

he did on October 16, 2023, (Doc. 24), and granted Petitioner leave to file a late notice of appeal. (Doc. 22.)

Petitioner filed his notice of appeal on November 16, 2023. (Doc. 27.) After Petitioner twice filed the incorrect forms, (Docs. 25–26, 29), I ordered Petitioner to submit to the Pro Se Intake Unit the correct forms, (Doc. 28.) After Petitioner filed the correct forms but failed to answer the portion of the form requiring him to state the issues on appeal, (Doc. 28), I ordered him to file a corrected affidavit, (Doc. 30.) Petitioner then filed the corrected forms, which I will consider in reviewing his motion. (Doc. 31.)

I have broad discretion in considering whether to grant an applicant's request to proceed in forma pauperis on appeal. *See Burda Media Inc. v. Blumenberg*, 731 F. Supp. 2d 321, 322 (S.D.N.Y. 2010). The central question is whether the appeal is taken in good faith. *See id.* at 322–23. “[G]ood faith is adjudged by an objective standard, and if an appeal is frivolous it is not taken in good faith.” *Morales v. New York and Presbyterian Hosp.*, No. 18-CV-9711, 2020 WL 13749978 at *3 (S.D.N.Y. April 13, 2020).

Petitioner alleges two grounds for appeal, both of which relate to Petitioner's argument that he was entitled to a justification charge. First, he states that I failed to address whether the “initial aggressor” theory was preserved. Second, he states that the jury instructions should have included a self-defense justification. Petitioner's arguments have already been addressed and rejected, and I find that his claims are frivolous and lack any arguable basis in law or fact. Therefore, I decline to grant him permission to proceed in forma pauperis on appeal. 28 U.S.C. § 1915(e)(2); *see also In re Seimon*, 421 F.3d 167, 169 (2d Cir. 2005).

Accordingly, Petitioner's motion for leave to proceed in forma pauperis on appeal is DENIED. The Clerk of Court is respectfully directed to terminate the open motions, (Docs. 26, 31), and to mail a copy of this order to the pro se Petitioner.

SO ORDERED.

Dated: April 5, 2024
New York, New York


Vernon S. Broderick
United States District Judge